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LABOUR DEPARTMENT

The 11th December, 1985.

No. 9/5/84-6 Lab./10378.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of Presiding Officer, Labour Court, Ambala in respect of the dispute between the workman and the management of M/s. Haryana Roadways, Karnal Depot, Karnal.

IN THE COURT OF SHRI V. P. CHAUDHARY,
PRESIDING OFFICER, LABOUR COURT,
AMBALA.

Reference No. 280 of 1984.

(Old No. 7 of 1982)

SHRI KASTURI LAL, WORKMAN AND THE
MANAGEMENT OF M/S. HARYANA
ROADWAYS, KARNAL DEPOT,
KARNAL.

Present:—

Shri O. P. Daryal, for workman.

Shri S. N. Gaur, for respondent.

AWARD

The Hon'ble Governor of Haryana in the exercise of powers conferred,—vide clause (C) of sub-section 10 of Industrial Disputes Act, 1947 referred the following dispute to Presiding Officer, Labour Court, Faridabad, between Shri Kasturi Lal, workman and the management of Messrs Haryana Roadways, Karnal. The terms of the reference are as under:—

"Whether the termination of services of Shri Kasturi Lal was justified and in order? If not to what relief is he entitled to?"

On constitution of Labour Court at Ambala. This reference was received by transfer.

Shri Kasturi Lal, workman in his claim statement alleged that he was employed as a Conductor in the Haryana Roadways, Depot, Karnal. On 2nd January, 1978, Shri M. S. Hooda and Shri Sunder Singh, Inspectors checked alighting passengers of his bus No. HRD 8142 at Azadpur and found seven passengers who had boarded

from Murthal to Delhi were without tickets. Thus it was alleged against him that he embezzled Rs. 14 as fare of per passenger was Rs. 2 and did not issue tickets to them. He further alleged that in fact on the way he found that one bus had gone out of order and many passengers of that bus boarded his bus due to rush he could not issue tickets to those 7 passengers. He also alleged that he did not charge any fare from those passengers. In fact the Inspectors forcibly took un-punched tickets from the petitioner and got made payment to him from those seven passengers statements of those passengers were recorded by the Inspector on the way bill. During the inquiry proceedings before the inquiry officer the way bill which was deposited by him along-with cash in his office was not got produced in the defence. He further alleged that no proper hearing no proper right of cross-examination to witnesses and no opportunity of leading defence was afforded to him, so he prayed that the termination order passed by General Manager, Karnal is liable to be declared un-just, illegal and he is entitled to the relief of reinstatement with continuity in service and with full back wages.

Respondent management appeared and contested the case, contending that the allegations made by the workman Shri Kasturi Lal, are basically wrong and cannot be believed because the bus was checked when the passengers were alighting from it. Seven passengers were found without tickets. On enquiry they told that they had paid fare to the conductor who did not issue any tickets to them. At that time seven tickets were taken from the conductor which were attached with the complaint which was filed against the workman to the General Manager, Roadways. It was also contended that show-cause notice charge-sheet along with list of witnesses were issued to the workman who filed reply to charge-sheet thereafter witnesses were summoned who were cross-examined by the workman. He was afforded an opportunity to lead defence evidence which he availed and thereafter affording personal hearing to workman the punishing authority passed his termination order.

Workman Kasturi Lal submitted replication through which he reiterated the pleas taken by him in his claim statement.

On the pleadings of the parties my predecessor framed the following issues:

ISSUE No. 1:

As per reference.

ISSUE No. 2:

Relief.

During the pendency of this case Shri Kasturi Lal expired his L.R.'s have been brought on the file who are represented by Shri O. P. Daryal, authorised representative.

I have heard Shri O. P. Daryal for the workman, L.R.s. and Shri S. N. Gaur, authorised representative of respondent and have also gone through the evidence available on the file. My issue-wise findings are as under:

ISSUE NO. 1:

As per reference the management Haryana Roadways was bound to discharge the onus of Issue No. 1 in other words it has to justify termination order of Kasturi Lal since deceased passed by it. Management examined Shri Karam Singh as MW-1 who stated that he has brought the concerned records,—vide M-1 charge-sheet was issued, summary of allegations is contained in Ex-M-2. List of witnesses is Ex-M-3, which were replied by the workman Shri Kasturi Lal. Thereafter statements of Shri Mohinder Singh and Shri Sunder Singh, Inspectors were recorded who were cross examined by the workman. Shri Satpal was examined by the workman in his defence. Copies of proceedings are Ex-M-6 to M-8. Inquiry report is Ex-M-9. Show cause notice is Ex-M-10 its answer is Ex-M-11. Thereafter Kasturi Lal was heard by the punishing authority on 4th December, 1978, after perusing the enquiry report and after affording opportunity of being heard to the workman the punishing authority terminated services of Shri Kasturi Lal, since deceased,—vide order Ex-M-12. This witness is also stated that five annual increments of Shri Kasturi Lal were stopped twice. Censure were issued and once an warning was also issued on account of the misdeeds committed by the workman. In cross-examination he stated that way bill and vouchers were not tendered in evidence because those were not traceable. In fact those vouchers and way bills were not deposited by the workman as deposed by workman witness Shri Mai Ram.

The Enquiry Officer Shri S. N. Gaur, appeared as MW-2 he supported the inquiry proceedings as narrated above. Shri Sunder Singh appeared as MW-3 while Shri M. S. Hooda appeared as MW-4. They supported the case of the management. In cross examination they stated that they never recorded the statement of any passengers on the way bill. They also denied the suggestions put by the workman in their cross-examination.

MW-1 is Shri Mai Ram, he deposed that since 1971 he has been working as a Booking Clerk. On 2nd January, 1978 Shri Kasturi Lal workman deposited cash with him and did not deposit the way bill with him. He also stated that as per practice the way bills are deposited by the Conductors later on and not with the cash. WW-2 is Shri Gurcharan Singh, he deposed that he prepared charge-sheet against the workman Kasturi Lal did not submit any application to him for supplying him way bills.

Shri Kasturi Lal workman, himself appeared as WW-3. His main contention is that he had not charged any fare from those seven passengers due to rush of passengers in the bus. On the other hand he has admitted that when his bus was checked by the Inspectors seven passengers were found without tickets. His main defence is that the statements of those passengers were recorded by the Inspectors on the way bill and they had stated that they had not paid any fare to him, but neither those passengers nor the way bills were produced in evidence.

Shri O. P. Daryal argued that the termination order is illegal because in the case in hand the enquiry officer neither recorded statements of passengers who were found without tickets nor the way bill was got produced from the management in the defence of the workman nor cash of conductor was checked. He relied upon 1985-Vol-I-All India Services Law Journal-Page 597 case State of Haryana vs. Mohan Singh. In this case their Lordship observed that termination on the charge of mis-appropriation on the solitary statement of the Chief Inspector who neither recorded the statement of the passengers who paid the fares to the workman but they were not given the tickets nor he checked the cash so it is a case of no evidence, hence the orders of the Court below were set aside.

With due respect to this judicial pronouncement delivered by the Hon'ble single bench I have to refer here the full bench judicial pronouncement of our Hon'ble High Court 1976-SIR-Vol-II Page 690, titled the State of Haryana and others vs. Shri Ram Chander. In that case 40 passengers were found travelling without tickets and certain punched tickets were in the pocket of the Conductor. The Courts below observed that the termination order based on hear say evidence was not sustainable hence the order was set-aside and Ram Chander was awarded relief. The State of Haryana knocked the doors of the

Hon'ble High Court and full Bench comprised of Hon'ble judges O. Channappa Reddy, Acting Chief Justice, M. R. Sharma, and Surinder Singh Judges observed that there is no bar against the reception of hear say evidence by the domestic tribunal, the extract to which such evidence may be received and must depend on the facts and circumstances on the case and the principle of natural justice. It was also observed that it is not always necessary for the disciplinary authority to record reasons if in full fledged inquiry agrees with the findings of enquiry officer. It was also observed that time and again it has been repeated by the Supreme Court that domestic tribunal in the absence of statutory guidance have right to regulate their own procedure and are also not bound by the strict rules of evidence. The rules of procedure and the rules of evidence observed in the Courts are open mis-placed in domestic enquiry. A domestic tribunal whose procedure is not regulated by an statute is free to adopt a procedure of its own so long it confirms to the principle of natural justice. It was also observed that departmental proceedings do not stand on the same footings as criminal prosecution in which high degree of proof is required.

It was further observed that the rules do not provide a personal hearing and there is no principle of natural justice which requires that a personal hearing should be given in the matters like this.

The another the most relevant precedent law is of the Hon'ble Supreme Court the highest court of the land and 1977-Vol-I-SIR-page 750 titled State of Haryana vs. Ratan Singh. It was observed that it is well settled that in a domestic inquiry the strict and sophisticated values of evidence under the Indian evidence act may not apply, all material which are logically probative for a prudent mind are permissible. There is no allergy to hear-say evidence provided it has reasonable nexus and credibility. It is true that departmental authorities and the administrative tribunal must be careful in evaluating such materials and would not glibly swallow what is strictly speaking not relevant under the Indian Evidence Act. In that case a Conductor was caught by the flying squad and found 11 passengers without tickets from whom fare had been charged by the Conductor but did not issue tickets. It was argued before the courts below that none of the 11 passengers were examined at the domestic enquiry. The Inspector who checked

the bus also did not record the statement of any passengers found without tickets and the third contention was that the Co-conductor had supported the management in league with the respondent. But their Lordship observed that non compliance with the departmental instruction statement of passengers not recorded does not vitiate the inquiry. The Administrative Tribunal had to follow their own procedure for conducting the domestic inquiry which should not be against the natural principle of justice. In that case the plea of the State was up-held in other words termination orders were up-held, and the pleas of the workman were turned down.

In view of above evidence and case laws referred there to I am of the considered opinion that in the case in hand the inquiry conducted by Shri S. N. Gaur, Inquiry Officer is proper and fair, it has not at all been vitiated at any stage because the Inquiry Officer followed the proper procedure as warranted by law nothing was shown to the under-signed by the authorised representative of workman that the cause/interest of workman was prejudiced at any stage of the inquiry. The Inquiry Officer afforded full opportunity to workman to cross examine the witnesses who were examined by the management against him, an opportunity to lead defence evidence was also afforded to him which the workman availed of and examined one witness in his defence before passing his termination order the punishing authority heard the workman at length. Which is clear from the order itself that on 2nd January, 1978, Shri Kasturi Lal, Conductor No. 197 was on duty with bus No. HRD 8142 which was running on Karnal-Delhi route, Shri M. S. Hooda and Shri Sunder Singh, Inspectors checked alighting passengers of the bus at Azadpur bus stop and found that 7 passengers who had boarded from Murtial to Delhi were found without tickets. It was also alleged against Kasturi Lal, workman that he had taken Rs. 14/- from them as fare Rs. 2/- per passenger and did not issue tickets to them. He after-going through the inquiry proceedings inquiry report and after hearing the workman passed his order of imposing penalty of the termination of workman.

Statements of Shri Karan Singh, Shri S. N. Gaur, Shri Sunder Singh, Shri M. S. Hooda in the Labour Court also give support that the termination order is justified.

The sole defence of Kasturi Lal that statements were recorded on way bill of the passengers is not tenable because it has not been supported by the Inspectors. Moreover the witnesses

16 of workmen, namely, Gurcharan Singh and Mai Ram both stated that the way bills were never deposited by the workman with management.

In view of the above evidence the management has proved to the hilt that the conductor Kasturi Lal, charged fares amounting to Rs. 14/- from 7 passengers, Rs. 2/- from each passenger and did not issue tickets to them thus he misappropriated Rs. 14/-.

The judicial pronouncement 1985-Vol-I-Page 587 State of Haryana vs. Mohan Singh, is not helpful to workman in the presence of full bench judicial pronouncement of our own Hon'ble High Court 1976-SIR-Vol-II, page 690 State of Haryana vs. Ram Chander and another full Bench judicial pronouncements it has been specifically observed that the hear-say evidence of passengers that the conductor charged fare from them and did not issue tickets to them can be safely relied upon.

The Hon'ble judges have gone saying upto that extent that even if the departmental instructions are not observed by the checking staff and even the enquiry officer followed a procedure convenient to him, it may not co-inside with the procedure followed by the court and even if personal hearing may not have been afforded to the aggrieved person in those circumstances the inquiry is not vitiated.

It appears that both the full bench judgement were not referred before my lordship in case State of Haryana vs. Mohan Singh, so in these circumstances with due difference I have to rely upon the full bench judgements referred above and have to hold on the basis of evidence and case laws referred thereto that the termination order passed by the Haryana Roadways, Karnal management is justified in order.

ISSUE No. 2:

On the basis of my findings on issue No. 1, I pass my award regarding the dispute in hand accordingly.

Dated the 10th October, 1985.

V. P. CHAUDHARY,
Presiding Officer,
Labour Court, Ambala.

Endorsement No. 2506, dated the 21st October, 1985.

Forwarded (four copies) to the Financial Commissioner and Secretary to Government,

Haryana, Labour and Employment Departments, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

V. P. CHAUDHARY,
Presiding Officer,
Labour Court, Ambala.

No. 9/5/84-6 Lab./10376.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of Presiding Officer, Labour Court, Ambala in respect of the dispute between the Workman and the management of M/s. Haryana Roadways, Kaithal.

IN THE COURT OF SHRI V. P. CHAUDHARY,
PRESIDING OFFICER, LABOUR COURT,
AMBALA

Reference No. 167 of 1984.
Old No. 213 of 1982.

SHRI SUBE SINGH, WORKMAN AND THE
MANAGEMENT OF HARYANA
ROADWAYS, KAITHAL.

Present:

Shri U. Kant, for workman.
Shri A. R. Goyal, for respondent.

AWARD

The Hon'ble Governor of Haryana in the exercise of powers conferred,—vide clause (C) of sub-section 10 of the Industrial Disputes Act, 1947, referred the following dispute to Presiding Officer, Labour Court, Faridabad, between Shri Sube Singh, workman and the management of Haryana Roadways, Kaithal. The terms of the reference are as under:—

“Whether the termination of services of Shri Sube Singh was justified and in order? If not to what relief is he entitled to?”

On constitution of Labour Court, Ambala. This reference was received by transfer.

Shri Sube Singh, workman has alleged that he was a Bus Conductor in Haryana Roadways Depot, Kaithal. On 4th February, 1980, his Bus No. 9231 on Chandigarh Kaithal route was checked at Kaithal Pehowa Crossing by the Inspecting staff as per allegations of the respondent five passengers were found without tickets it was alleged that the workman had embezzled Rs. 9.50

thereafter no proper enquiry was held and G.M., Kaithal, after putting reliance on the report of Enquiry Officer terminated his services, even the G.M. did not afford him any opportunity of being heard. So the enquiry being partial and the conduct of the G.M. Roadways, Kaithal not weighing the matter properly for imposing penalty of termination order dated 6th March, 1982. is against law and facts, it be quashed. It was further alleged that the petitioner is entitled to re-instatement with continuity in service and full back wages.

Respondent management contested the case and contended that before passing the termination order of the petitioner he was served with a charge-sheet. The charges levelled against the petitioner in the charge-sheet were based on facts. The applicant had embezzled Rs. 9.50 with the malafide intention for which proper and fair enquiry was held. Inquiry Officer reached at the conclusion that the department has proved guilt of the petitioner and thereafter the G.M., Kaithal after going through the whole matter into controversy passed termination order of the petitioner which is just and according to law and does not require any interference by this Court.

On the pleadings of the parties the following issues were framed:—

- (1) Whether the domestic enquiry was fair and Proper? If so, to what effect?
- (2) As per reference?
- (3) Relief.

I have heard Shri Uma Kant authorised representative of workman and Shri A. R. Goyal for respondent and have perused the oral and documentary evidence placed on the file. My issue-wise findings are as under:—

ISSUE No. I:

In support of this issue Shri M. P. Singh, appeared as MW-1 and stated that inquiry against Sube Singh, Conductor was assigned to him,— vide order dated Ex-M-1. Report of the Inspector is MW-2 Charge-Sheet issued to the workman was Ex-MW-3. Reply received from workman is Ex-M-4. Notices are Ex-M-5. Both the parties appeared on 5th May, 1980 statements of witnesses were recorded. Workman petitioner

was afforded an opportunity to cross-examine the witnesses and also lead defence evidence. Petitioner cross-examined the witnesses and did not lead any defence. MW-2 is Shri Kartar Singh Tanwar Inspector he stated that he checked bus on 4th February, 1980 of the workman at Pehowa-Kaithal crossing and detected 5 passengers alighting without tickets he prepared report Ex-MW-2. On enquiry it was found that the conductor had charged fare from them. In cross-examination he stated that the passengers had not taken any liquor. He also stated that he did not check the cash of the conductor. MW-3 Sikander Lal stated that after the inquiry show cause notice Ex-M-7 was issued. On receipt of reply Ex-M-9 personal hearing was afforded to Sube Singh, conductor. Proceedings to this effect are Ex-M-10 thereafter services of workman were terminated,—vide order Ex-M-11. Workman went in appeal to STC but his appeal was dismissed. Order to the Sube Singh appeared as AW-1. He stated that when his vehicle was checked at that time the bus was over-loaded. He had not charged any fare from the passengers who alighted without tickets and were napped by the Inspector. In fact these passengers were fully drunked. The Inspector snatched tickets from those passengers and tore them and threw away. He further stated that inside the bus the Inspector found two passengers sitting without tickets. On inquiry they told the Inspector that their tickets were with the other three passengers who were sitting in rear seats who had get down. On enquiry the passengers told that their tickets have been torn away by the Inspector. In cross-examination the conductor could not explain why he did not take this defence during the inquiry proceedings.

From the inquiry proceedings carried out by the inquiry Officer and the evidence which has come on the file it appears that the inquiry Officer conducted inquiry against the conductor in a proper and fair manner. He did not violate any instructions regarding conducting the inquiry. The allegations of the workman that he was not given proper opportunity to cross examine the witnesses and did not afford opportunity to lead defence is wrong and baseless. Inquiry Officer recorded statement of workman where he voluntarily stated that he does not want to lead defence evidence. He has cross-examined the witnesses who appeared against him. In the cross-examination of the Inquiry Officer he did not take that defence which he has taken now in this court when the inquiry officer was examined in these proceeding.

The mere allegation that no opportunity of ISSUE No. 2: being heard was given to workman is also wrong and becomes falsified in the presence of Ex-M-10.

The learned A/R of the workman based his reliance on 1985 Vol-I-Mahavir Singh vs. The State of Haryana—Page 1—01 in which it was observed that Inspector neither checked the way bill nor the cash of the conductor un-corroborated statement of Inspector could be of no value—accused held to be innocent and was acquitted. Similar observations were made by State of Haryana vs. Mohan Singh in case 1985-II-Service Law Report—Page 116. Both the judicial pronouncements have been delivered by the single bench but full bench judicial pronouncement 1976-SIR—page 690 attaches no importance for checking the way bill and cash in which it has been emphasised that hear-say evidence can be accepted it was held that in departmental enquiry there is no bar against the exception of hear-say evidence by the domestic tribunal. It was also observed that departmental proceedings do not stand on the same footing as criminal prosecutions in which high degree of proof is required. These observations finds place in a case K. L. Sindhe vs. State of Mysore 1976—Vol.-III-SCC-76. The another judicial pronouncement which has got direct bearing on the case in hand 1977-Vol.-I-SIR—Page 750 titled State of Haryana vs. Rattan Singh it was observed that hear-say evidence is permissible provided it has reasonable and nexus and credibility.

In view of my above discussions I am of the opinion that in the case in hand five passengers were caught red-handed without tickets. Fare has been charged by the Conductor and did not issue the tickets. The statements of passengers that they had paid fare to the Conductor and latter did not issue tickets to them is sufficient evidence which can be relied upon and this evidence was accepted by the Inquiry Officer, so I hold that there was no necessity of checking cash and way bill as observed by full bench of Hon'ble Punjab and Haryana and also by the Hon'ble Supreme Court as referred above. It appears that enquiry conducted by the inquiry officer is fair and proper. The G.M. perused the enquiry report and also the whole matter independently and after affording opportunity to conductor of being heard passed the termination order, so this issue is decided in favour of management and against the workman.

Regarding this issue I would again like to say that the inquiry against the workman was properly conducted. The witnesses who appeared in this court also supported the respondent-management case. That workman Sube Singh had embezzled Rs. 9.50 for not issuing tickets to five passengers and having charged fare from them as fully detailed and discussed under issue No. 1, so the order of termination of workman is just and according law and does not require any interference by this court. Accordingly, it is sustained.

I pass award regarding the dispute in hand accordingly.

Dated the 7th October, 1985.

V. P. CHAUDHARY,
Presiding Officer,
Labour Court, Ambala.

Endorsement No. 2501, dated the 21st October, 1985.

Forwarded (Four Copies) to the Financial Commissioner and Secretary to Government Haryana, Labour and Employment Departments, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

Dated, the 7th October, 1985.

V. P. CHAUDHARY,
Presiding Officer,
Labour Court, Ambala.

No. 9/5/84-6 Lab./10379.—In pursuance of the provisions of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947) the Governor of Haryana is pleased to publish the following award of Presiding Officer, Labour Court, Ambala in respect of the dispute between the Workman and the Management of M/s. A. R. Springs Industries, Karnal.

IN THE COURT OF SHRI V. P. CHAUDHARY,
PRESIDING OFFICER, LABOUR COURT,
AMBALA.

Reference No. 1 of 1984.

SHRI MADAN LAL WORKMAN AND THE
MANAGEMENT OF M/S A. R. SPRINGS
INDUSTRIES, KARNAL.

Present:

Shri V. K. Modi, for workman.
Shri J. P. Singh, for respondent.

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AWARD

(2) Relief.

The Hon'ble Governor of Haryana in the exercise of powers conferred,—vide clause (C) of sub-section (10) of the Industrial Disputes Act, 1947, referred the following dispute between Shri Madan Lal, workman and the management of Messrs A. R. Springs Industries, Karnal. The terms of the reference are as under:—

"Whether the termination of services of Shri Madan Lal, was justified and in order? If not to what relief is he entitled to?"

Shri Madan Lal, workman has averred in his statement of claim that he joined service of the respondent management in February, 1980 as a Foreman at the rate of Rs. 900/- including all the allowances and served the respondent for 3½ years. On 13th August, 1983, the management terminated his service without any reason in violation of Section 25 (F) of the Industrial Disputes Act, 1947. Certain junior workers, namely, Shri Mohinder Kumar, Shri Matu Ram and Shri Ram Dev are still in service of the respondent. It was prayed that the termination order dated 13th September, 1983 be set-aside and the workman be re-instated with full back wages and continuity in service, etc.

Respondent management contested the claim contended that application is not maintainable. It was also contended that the duties of the applicant were of supervisory nature being a Foreman, so his dispute is not covered under the Industrial Disputes Act, 1947. The establishment of the respondent is covered under Punjab Shops and Commercial Establishment Act, 1956. Hence; the Factories Act is not applicable nor the applicant is entitled to the relief claimed for.

It was also contended that he left the services of the respondent management of his own in the month of January, 1984. He was re-appointed in the month of April, 1984. It was further alleged that again he absented himself. Letters were written to applicant. But he failed to report on duty. Ultimately his services were terminated. Retrenchment compensation was paid to him.

On the pleadings of the parties the following issues were framed:—

- (1) Whether the termination order in question dated 13th August, 1983, is legal if not its effect ? OPM

I have heard Shri V. K. Modi, Authorised representative of workman and Shri J. P. Singh, authorised representative of respondent management and have perused the oral and documentary evidence placed on the file. My issue-wise findings are as under:—

ISSUE No. 1:

In support of this issue management Examined Shri Mohinder Kumar as MW-1 who stated that he is sole proprietor of respondent firm. He has 5 or 6 employees. His firm is covered under Shops Act. Applicant was employed as a foreman. He left his job of his own. A letter was written to him asking him to return on duty copy of the same is Ex-M-1. When the applicant did not join his duty one more letter was despatched to him. Copy of the same is Ex-M-2. The letter was despatched under Postal Certificate. Photo-stat copy of the Ex-M-3. When applicant did not report on duty then one month pay was despatched to him. Regarding terminating his services, during cross-examination many suggestions were put to him but he denied. He also stated that applicant voluntarily left the service of respondent management and did not appear, in spite of, repeated requests.

Shri Ram Dev was examined as MW-2. He stated that he took one month pay of the applicant and delivered him at his house. At that time applicant used to reside with his brother.

Workman Madan Lal in support of his case examined himself as MW-I and stated that he was appointed at the monthly pay of Rs. 900/- but only Rs. 600/- P.M. used to be paid to him. He did not leave his job himself but his services were terminated in a arbitrary manner. Certain juniors person have been retained in service. Respondent has got three firms. Which are manned by MW-1 alone. He also stated that he did not receive any letter nor one month pay. MW-2 Upinder supported the case of applicant. He also stated that he used to be in the employment of respondent management. He was also terminated but when he went to management for job he was not allowed to join his duty.

In view of the above evidence, I am of the considered opinion that from letters Ex-M-1 and M-2 and Photo-stat copy of UPC M-3, coupled

with the statements of MW-1 and MW-2 it appears that the case of the applicant that the record, in question, regarding letters and UPC is a fabricated one is not believable because the management needed a Foreman and it employed the applicant when he remained absent. Letters were written to him for taking him into employment but he failed to report on duty. Applicant being absentee faced his termination. As per statement of MW-2 he delivered one month pay in lieu of notice period to the applicant there is nothing in the cross-examination of management witnesses that why they have deposed falsely against the applicant. MW-2 is an ordinary worker. He is in the service of the management from the time of applicant and he has got no adverse interest against the applicant. Nor any suggestion was put to MW-2 for having made deposition in this court on oath against the interest of the applicant, so it clearly appears that workman remained absent from his duty. His services were terminated with immediate effect and one month pay was delivered to him at his house through Shri Ram Dev MW-2. So the termination order regarding the services of the applicant is justified and in order. Applicant is not entitled to any relief claimed for. Hence, this issue is decided in the affirmative.

ISSUE No. 2:

On the basis of my findings on issue No. 1, I hold that the termination order regarding the services of applicant is justified and according to law. So I pass my award regarding the impugned dispute accordingly.

Dated, the 10th October, 1985.

V. P. CHAUDHARY,
Presiding Officer,
Labour Court, Ambala.

Endorsement No. 2507, dated the 21st October,
1985

Forwarded (four copies) to the Financial Commissioner and Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

V. P. CHAUDHARY,
Presiding Officer,
Labour Court, Ambala.

No. 9/5/84-6Lab./10380.—In pursuance of the provisions of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of Presiding Officer, Labour Court, Ambala, in respect of the dispute between the workman and the management of the President Notified Area Committee, Pundri, district XEN, Kurukshetra :—

IN THE COURT OF SHRI V. P. CHAUDHARY,
PRESIDING OFFICER,
LABOUR COURT, AMBALA

Old Reference No. 118 of 1979
New Reference No. 226 of 1984

SHRI KEWAL KRISHAN PARBHAKAR, WORKMAN AND THE MANAGEMENT OF THE PRESIDENT NOTIFIED AREA COMMITTEE, PUNDRI, DISTRICT XEN, KURUKSHETRA

Present:

Shri Madhu Sudan Saran Cowshish for workman.

Shri Som Dev Sharma for respondent.

AWARD

The Hon'ble Governor of Haryana in the exercise of powers conferred by clause (c) of sub-section (i) of Section 10 of the Industrial Disputes Act, 1947 referred the dispute between Shri Kewal Krishan Parbhakar, workman and the management of the President, Notified Area Committee, Pundri, district Kurushetra, to Labour Court, Rohtak. The terms of the reference are as under :—

"Whether the termination of services of Shri Kewal Krishan Parbhakar, was justified and in order ? If not, to what relief is he entitled to?"

On constitution of Labour Court at Ambala, this reference was received by transfer.

Workman Kewal Krishan Parbhakar has averred in his claim statement that he had been appointed as Secretary in the Municipal Committee, Pundri in April, 1969 and worked as such till 6th January, 1975. He was put under suspension up to 11th February, 1977 and thereafter he was dismissed by the President, Notified Area

Committee, Pundri when he had no such powers to do so. According to Section 38 of the Haryana Municipal Act, 1973, his appointing authority is State Government of Haryana and President is a subordinate officer and is not empowered to impose penalty of dismissal. It was also contended that no charge-sheet, no inquiry was ever held against him. Order of President is invalid, illegal and liable to be set-aside and he is entitled to be re-instatement with continuity in service as well as full back wages, etc.

Respondent Notified Area Committee, Pundri, first of all disputed the jurisdiction of the Labour Court and contended that workman embezzled a sum of Rs. 33,347 and criminal case under section 409 of I.P.C. was registered against him at Police Station, Pundri. Workman Kewal Krishan Parbhakar was served with charge-sheet. After hearing his objections Shri Hakam Singh, Law Officer was appointed as Inquiry Officer by Deputy Commissioner, Kurukshetra. He conducted inquiry in a proper and fair manner. Workman Kewal Krishan Parbhakar was afforded an opportunity to cross-examine the witnesses who appeared against him. He was afforded an opportunity to defend himself. It was also contended that certain records were also taken away by the workman. Regarding that a theft case was also registered against him at Police Station, Pundri. President, Notified Area Committee, Pundri, was fully empowered to impose penalty of dismissal upon the workman.

Workman filed replication through which he denied the allegations of respondent and reiterated his own pleas taken in the claim statement.

On the pleadings of the parties, the following issues have been framed for the just decision of the case by my learned predecessor:

ISSUES:

- I. Whether the written statement filed by the management is not entertainable in the present form on the reason given in preliminary objection taken in the re-joinder ?
- II. As per reference.

ISSUE NO. 1:

Issue No. 1 was not pressed by either party so neither any evidence was recorded on it, nor it requires any findings in view of order, dated 18th February, 1980.

ISSUE NO. 2:

In support of this issue respondent-management examined Shri Mahavir Sharma as MW-1, he deposed that Shri Kewal Krishan was Secretary of Notified Area Committee, Pundri. His main function was to collect the taxes. An enquiry was conducted against him. He was found having embezzled funds of Municipal Committee, Pundri. F.I.R. was registered against him which is Mark-A. Report of Inquiry Officer is Exhibit MW-1/1. MW-2 Shri Ram Saran Saxena Kathuria he deposed that he took charge as a Secretary of Notified Area Committee, Pundri on 17th November, 1976. President, Notified Area Committee, Pundri, terminated services of workman on 11th February, 1977 in his cross examination, he stated that President, Notified Area Committee,—vide section 40 of Haryana Municipal Act, 1973 was empowered to impose punishment of dismissal/termination upon the workman.

Shri K. K. Parbhakar, workman, examined himself as WW-1. He stated that he did not know that any embezzlement or theft case was registered against him. He also denied inquiry conducted by Vigilance Department against him. However he admitted that he had gone in appeal to Deputy Commissioner, Kurukshetra against the order of President, Notified Area Committee, Pundri.

Shri Madhu Sudan Saran Cowshish, authorised representative of workman urged that President has no powers to impose penalty upon the workman. He also argued that the audit reports, the report of Vigilance Inquiry Officer and report of Departmental Inquiry Officer are not correct and should not be believed. On the other hand Shri S. D. Sharma refuted the arguments advanced by the authorised representative of workman and strongly agitated that the workman had embezzled a sum of Rs. 33,347, as it is evident from the Audit Report placed on the file. He had also stolen record from the office of Notified Area Committee, Pundri and cases of 409 I.P.C. and 379 I.P.C. were registered against him.

After going through the evidence and giving thoughtful consideration to the arguments of the Ld. authorised representatives of the parties I reach at the conclusion that the placed on the file clearly speaks about the embezzlement done by the workman. The T.I.R. regarding the theft at least reads the allegations of the theft of records although judgement of these two cases are not on the file but the behaviour and conduct of the workman has become suspicious. The enquiry conducted by Shri Hukam Singh, Law Officer against the workman is proper and fair. Charge-sheet was served along with list of allegations and list of witnesses was also supplied to him, witnesses were examined in his presence. Workman was afforded an opportunity to cross-examine the witnesses. He was also allowed to lead defence.

The Haryana Municipal Act, was enacted in 1973 while workman joined services of respondent in 1969. He has not disclosed who was his Appointing Authority whether the Administrator of the Municipal Committee or the President of the Municipal Committee or the Deputy Commissioner, Kurukshetra. But at the time of taking decision on the report of the Inquiry Officer, President, Notified Area Committee, Pundri assigned the powers to terminate him in fact the State of Haryana does not come into picture because it was not the appointing authority of workman.

No doubt that the onus for justifying the termination order of Shri K. K. Parbhakar was upon the respondent-management and it has proved its justification as discussed above. The workman has withheld his appointment letter which clearly shows if the appointment letter would have been placed on the file in these circumstances it must have gone against him, so non-production of this best piece of evidence goes against the workman himself and an adverse inference has to be drawn under section 114(g) of Indian Evidence Act, 1872. After coming in force, the Haryana Municipal Act, 1973 termination of a Secretary of Municipal Committees is with the approval of the State Government but it is silent about the termination of Secretaries of Notified Area Committee.

It is nowhere established that termination orders passed by the President, Notified Area Committee, Pundri were null and void. So I

have to hold that order of termination of services of Shri K. K. Parbhakar are just and in accordance with law, so this issue is decided in favour of respondent-management and against the workman.

RELIEF:

For the foregoing reasons and on the basis of my finding on Issue No. 2, I hold that the termination order is just and according to law. So I pass my award regarding the controversy between the parties accordingly.

The 10th October, 1985.

V. P. CHAUDHARY,
Presiding Officer,
Labour Court, Ambala.

Endorsement No. 2508, dated Ambala City, the 21st October, 1985.

Forwarded (four copies) to the Financial Commissioner and Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

V. P. CHAUDHARY,
Presiding Officer,
Labour Court, Ambala.

The 26th December, 1985

No. 9/5/84-6 Lab./11298. In pursuance of the provisions of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of Presiding Officer, Labour Court, Ambala in respect of the dispute between the workman and the management of the Haryana Roadways, Kaithal:—

IN THE COURT OF SHRI V. P. CHAUDHARY,
PRESIDING OFFICER, LABOUR COURT,
AMBALA.

Reference No. 184 of 1984

between
SHRI SWARAN SINGH, WORKMAN AND THE
MANAGEMENT OF THE HARYANA
ROADWAYS, KAITHAL

Present:

Shri U. Kant for the workman.
Shri A. R. Goyal for the respondent.

AWARD

The Hon'ble Governor of Haryana in the exercise of powers conferred,—vide clause (C) of sub-section (i) of section 10 of the Industrial Disputes Act, 1947, referred dispute between Shri Swaran Singh, workman and the management of the Haryana Roadways, Kaithal, originally to Labour Court, Faridabad.

The terms of reference are as under :—

“Whether the termination of services of Shri Swaran Singh, workman, was justified and in order ? If not, to what relief is he entitled to?”

In April, 1984, Labour Court, was created at Ambala so this reference was received by transfer.

Shri Swaran Singh, workman alleged that he was employed as a Conductor in the service of respondent. His services were terminated illegally without following the proper procedure. The Enquiry Officer did not conduct enquiry against him any fair and proper manner. No charge-sheet along with list of witnesses and documents was supplied to him. He was not afforded any opportunity to cross-examine the witnesses and to lead defence evidence. He further stated that the charges levelled against him, regarding re-selling of the tickets were false because at the first opportunity he had told Shri Kirpal Singh, that Rs. 48.30 was his personal cash but none listened to him. His services were terminated illegally. He is entitled to re-instatement with continuity in service and with full back wages.

Respondent-management was served. It contested this dispute and contended that the demand notice issued by the workman is false and baseless in fact he was found having re-sold the tickets and was also found in excess of cash, so a proper charge-sheet was served upon him. Inquiry Officer was appointed who followed proper procedure and also conducted proper and fair enquiry. Thereafter, G.M. Haryana Roadways, gave workman personal hearing and thereafter his services were terminated.

On the pleadings of the parties the following issues were framed :—

ISSUE NO. 1:

As per reference.

I have heard Shri U. Kant, authorised representative of workman and Shri A. R. Goyal, for respondent-management and have perused the oral and documentary evidence placed on the file. My issue-wise findings are as under :—

ISSUE No. 2:

In support of this issue management examined Shri Mohinder Paul Singh as MW-1 who stated that he was appointed as an Inquiry Officer against Shri Swaran Singh, workman by G. M. Roadways, Kaithal,—vide orders Ex-MW-1. He issued notice Ex-MW-2, MW-3 to both the parties and recorded statement of Shri Kirpal Singh, Inspector afforded full opportunity to workman to cross-examine to him. Cross-examination of this witness is more significant in which he stated that in Ex-MW-4 it has been mentioned that none of the party went to adduce, further evidence is not signed by workman Swaran Singh. He did not record statement of Shri Swaran Singh whether he wants to produce any defence evidence or wants to further cross-examine the witnesses.

He also stated that while closing statement of the witness he did not record R.C.A. I nor he read over the statements which he recorded to the workman. He also admitted that list of witnesses was not supplied by him to the workman.

MW-2 Shri Kirpal Singh, Inspector deposed that he checked the cash of Shri Swaran Singh found excess Rs. 48.30 on the basis of that he prepared a case and filed complaint to General Manager. In cross-examination he categorically stated that his complaints is based on doubt and is not based on evidence.

He further stated that he had given note of his doubt on pay bill which was with the workman. He also stated that he had not trapped the case of re-sale of tickets. He also stated that he did not record statement of any passenger. He also stated that he was never examined by the Inquiry Officer. It is First time that his statement has been recorded in the court.

On the other hand the defence of workman Shri Swaran Singh is that he never re-sold the tickets of Rs. 48.30 which was found in excess was his personal cash.

No doubt there appears some of his irregularities in the performance of duties of workman Swaran Singh, first of all that he did not give a note of his personal cash, on the way bill and also did not close cash, while mentioning the number of tickets on the way bill. In the meantime Shri Kirpal Singh, Inspector turned up and checked his tickets and cash and then prepared complaint against him.

On the complaint of Shri Kirpal Singh, Inspector, Inquiry Officer was appointed who is MW-1 he stated that he examined Kirpal Singh, Inspector who is main prosecutor in this case. But Shri Kirpal Singh stated that he was never examined by the Inquiry Officer, and this on oath statement of Shri Kirpal Singh is dated 29th April, 1985 which he made before the under-signed.

It has become a problem whether MW-1 should be believed and MW-2 should be believed. It is a settled law when suspicion arises in any matter in these circumstances the benefit has to be given to the sufferer, and in this case sufferer is Shri Swaran Singh, workman.

The case in hand solely based on the bold statement of Shri Kirpal Singh which cannot be believed because he himself stated that he prepared this case against Shri Swaran Singh on the basis of doubt and not on the basis of any evidence against him.

As I have re-produced cross-examination of MW-1, Shri Mohinder Singh who stated that he neither afforded an opportunity to workman to cross-examine the witnesses nor he afforded any opportunity to him to lead evidence, which clearly shows that enquiry conducted by the Enquiry Officer is not at all fair and proper. Moreover, the defence of Shri Swaran Singh is plausibly that Rs. 48.30 was his personal cash and he was not heard that his services were accordingly terminated illegally.

In view of my above conclusion I set-aside the order of termination of Shri Swaran Singh and order his re-instatement with continuity in service and with full back wages.

Dated the 21st November, 1985.

V. P. CHAUDHARY
Presiding Officer,
Labour Court, Ambala

Endorsement No. 3016, dated the 5th December, 1985

Forwarded (four copies) to the Financial Commissioner and Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

V. P. CHAUDHARY,
Presiding Officer,
Labour Court, Ambala.

No. 9/5/84-Lab./11302.—In pursuance of the provisions of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of Presiding Officer, Labour Court, Ambala, in respect of the dispute between the workman and the management of (i) The Secretary, Haryana State Electricity Board, Chandigarh (ii) The XEN, 'OP' Division, H.S.E.B., Pinjore.

IN THE COURT OF SHRI V. P. CHAUDHARY,
PRESIDING OFFICER,
LABOUR COURT, AMBALA

Reference No. 78 of 1984

SHRI RAJ KUMAR, WORKMAN AND THE MANAGEMENT OF THE SECRETARY, HARYANA STATE ELECTRICITY BOARD, CHANDIGARH, (ii) THE XEN, 'OP' DIVISION, H.S.E.B., PINJORE

Present:

Shri Rajeshwar Nath, for the workman.

Shri P. S. Sharma, for the respondent.

AWARD

The Hon'ble Governor of Haryana in exercise of powers conferred,—vide clause (C) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947 referred the dispute between Shri Raj Kumar, workman and the management of the Haryana State Electricity Board, etc., to this Court. The terms of reference are as under :—

Whether the termination of services of Shri Raj Kumar, workman, was justified and in order ? If not, to what relief is he entitled to?

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Shri Raj Kumar, workman, through his statement of claim alleged that he was employed on daily wages as a labourer with the respondent-management. He served the respondent for more than three years. His services were illegally terminated in violation of section 25(F) of the Industrial Disputes Act, 1947. On 6th June, 1985, during conciliations proceedings he has reinstated but he was not paid the wages for the period of his legal termination on 6th October, 1983 and 21st June, 1984. He prayed that termination of services of petitioner be declared unjustified. Petitioner be re-instated, with continuity in service with full back wages.

Respondents contested the case contended that Shri Raj Kumar is not covered in the definition of workman under the Industrial Disputes Act, 1947. Labour Court, has no jurisdiction to try the present reference. Respondent H.S.E.B. is a juristic person under the Haryana State Electricity Board and has not been properly empled as a party, so reference is bad for non-joinder and mis-joinder of necessary parties. On merits it was contended that workman was employed on daily wages. As per rate prescribed by the Deputy Commissioner, Ambala, it was made clear to the workman that as and when material and work will be available he will be kept on work otherwise not. He was employed as a casual labourer. It was also contended that in view of above circumstances, workman is not entitled to the wages claimed for.

On the pleadings of the parties, the following issues were framed :—

I have heard Shri Rajeshwar Nath for the workman and Shri P. S. Sharma for the management. My issue-wise findings are as under :—

ISSUE NO. 1:

In support of this issue the management examined Shri C. D. Sud and Shri Gopal Singh, S.D.O., both the witnesses deposed that workman Shri Raj Kumar was employed on daily wages as a casual labourer with the condition that he will remain on job till the work existed and the material remained available otherwise the workman shall be out of work.

On the other hand, Shri Raj Kumar stated that he joined service of respondent in May, 1981 on daily wages. He was removed from service on 6th October, 1983, thereafter he was again

taken in service, he has demanded the wages for the period for which he remained out of job.

Statement of Shri Dhama Singh, dated 27th September, 1984, is very material and significant when he deposed that there was no material and work with the department, so the workman was retrenched. As soon as the material was made available and work came into existence the workman was again taken back in the service.

In view of above circumstances from the service condition, the workman, it is clear that he was employed on daily wages. This fact has been admitted by the workman himself. In other words, there was clear understanding between the parties that if there will be material and work with the department, the workman shall be employed otherwise he shall be out of work. On oath statement of Shri Dharam Singh and Shri S. D. Sud, Junior Engineers and Shri Ekbal Singh, S.D.O., cannot be ignored. No notice, no retrenchment compensation I think is permissible nor the department can be punished for making payment to the workman for the period when there was no material and no work with the department and the workman remained out of job. Had there would have been any evidence on the file that there was work and material with the department and the workman was knowingly not given the job or some other workman was accommodated in his place, in these circumstances workman was entitled to wages for the period for which he remained un-employed. So case of the management is on well-fooing, claim of the workman is baseless, alleged retrenchment order was justified so this issue is decided in favour of the management and against the workman.

ISSUE NO. 2 & 3:

Issue No. 2 and 3 were not pressed at the time of argument. Both the issues are decided against the management.

ISSUE NO. 4 : RELIEF:

On the basis of findings on issue No. 1, the workman is not entitled to reliefs claimed for. So I pass my award accordingly :—

V. P. CHAUDHARY,
Presiding Officer,
Labour Court, Ambala.

The 26th November, 1985.

Endorsement No. 3018, dated the 5th December, 1985.

Forwarded (four copies), to the Financial on 6th October, 1983, thereafter he was again

Haryana, Labour and Employment Departments, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

The 26th November, 1985.

V. P. CHAUDHARY,
Presiding Officer,
Labour Court, Ambala.

The 7th January, 1986

No. 9/5/84-6-Lah./11040.—In pursuance of the provisions of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947) the Governor of Haryana is pleased to publish the following award of Presiding Officer, Industrial Tribunal, Faridabad in respect of the dispute between the workman and the management of Star Wire (India) Ltd., 21/4, Mathura Mathura Road, Faridabad.

BEFORE SHRI R. N. BATRA, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL, HARYANA, FARIDABAD

Reference No. 105/1982

between

SHRI FAKRUL HASSAN, WORKMAN AND THE MANAGEMENT OF M/S STAR WIRE (INDIA) LTD., 21/4, MATHURA ROAD, FARIDABAD.

Present :

Shri M. K. Bhandari, for the workman.
Shri K. P. A. Aggarwal, for the management.

AWARD

In exercise of the powers conferred by clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947, the Governor of Haryana referred the following dispute between Shri Fakrul Hassan, workman and the management of M/s Star Wire (India) Ltd., 21/4, Mathura Road, Faridabad, to this Tribunal for adjudication :—

Whether the termination of service of Shri Fakrul Hassan was justified and in order ? If not, to what relief is he entitled ?

2. Notices were issued to both the parties. The claimant in his claim statement dated 28th May, 1982 alleged that he was appointed as Teemerman on 13th May, 1981 on permanent basis at a salary of Rs. 680 vide letter dated 25th May, 1981 and that before that letter a telegram was sent to him by the respondent on 12th May, 1981 to report for duty. It was further alleged that the claimant was stopped at the gate of the factory on 14th August, 1981 and that his services were illegally terminated on that date. It was further alleged that he protested against illegal termination vide letters dated 14th August, 1981, 24th August, 1981 and 16th September, 1981 addressed to the respondent and the Labour Inspector, Sector 7, Faridabad. It was alleged that the claimant was given charge-sheet, dated 14th August, 1981 containing false allegations and that a domestic enquiry was held which was an empty formality because principles of natural justice were not followed. It was further pleaded that the claimant was entitled to reinstatement with full back wages.

3. The Management in its written statement dated 12th June, 1982 and 22nd October, 1984 pleaded that the claimant was appointed on 13th May, 1981, as Teemerman for six months on Rs. 680 per month and not on permanent basis nor the letter dated 25th May, 1981 was issued by the Management. It was pleaded that the reference under Section 2-A of the Industrial Disputes Act, 1947 was incompetent because the dispute did not fall under the purview of Section 2-A of the Industrial Disputes Act, 1947. It was further pleaded that the Management sent a telegram to the claimant on 12th May, 1981 asking him to report for duty soon. It was pleaded that it was learnt that the claimant black mailed the employer and that his previous antecedents were not good and for that reasons, he did not submit character certificate and clearance certificate from the previous employer. It was further pleaded that on 10th July, 1981, the claimant was asked to produce the clearance certificate from his previous employer namely M/s Cycle Equipment Co. Delhi, but the claimant avoided to produce the same. It was also pleaded that on 13th August, 1981, the claimant was advised to bring clearance certificate within 24 hours but he got excited and stated that he was not bringing the said certificate and that the Management could take action. It was pleaded that on

14th August, 1981, the claimant was chargesheeted, but he refused to accept the chargesheet and its copy was pasted on the notice board and that on 14th September, 1981, the claimant took the copy of the chargesheet in the office of the Labour Inspector, Sector 7, Faridabad and that no reply was received from the claimant to the chargesheet and a domestic enquiry was ordered and that a notice of enquiry was received by the claimant on 21st September, 1981 but he failed to participate in the enquiry on 22nd September, 1981 due to which *ex parte* proceedings were ordered against him and statements of the witnesses of the management were recorded. It was further pleaded that in the enquiry, the charges stood proved against the claimant and, therefore, he was dismissed on 12th October, 1981.

3. The claimant in his rejoinder dated 2nd August, 1982 reiterated the pleas taken in the claim statement.

4. On the pleadings of the parties, the following issues were framed on 2nd August, 1982 and 15th July, 1985:—

- (1) Whether the enquiry was fair and proper ? OPM
- (2) Whether the termination of services of Shri Fakrul Hassan was justified and in order ? If not, to what relief is he entitled to ? OPM.
- (3) Whether the dispute does not fall within the purview of Section 2-A of the Industrial Disputes Act, 1947 ? OPM.
- (4) Whether the letter dated 25th May, 1981 is a forged one as pleaded ? OPM.

5. It may be mentioned that the Management examined three witnesses and documents, Ex. M-1 to M-14, have been tendered into evidence. The claimant appeared in the witness box and documents, Ex. W-1 to W-11 have been tendered into evidence. After going through the entire evidence and hearing the representatives of both the parties, my findings on the above issues are as under :—

ISSUE NO. 4 :

6. In order to determine the other issues, it will be necessary to decide issue No. 4 in the

first instance. MW-1 Shri Jagdish Lal Katyal stated that the claimant was appointed *vide* letter Ex. M-6 which was handed over to him and that the claimant affixed his signatures on this letter in his presence. He further stated that letter copy Ex. M-12 was not issued by the Management, but, on the hand it was a forged one. He further stated that the claimant was appointed on 13th May, 1981 while the letter Ex. M-12 was dated 25th May, 1981. MW-3 Shri Mohinder Kumar Gupta, Director of the respondent Company, stated that the claimant was appointed,—*vide* letter Ex. M-6. He further stated that the letter copy Ex. M-12 dated 25th May, 1981 was not issued by them and that the Company always issued original letters of appointment to the employees and that the letter Ex. M-12 was a forged documents. He further stated that the matter in the middle portion of Ex. M-12 was fitted and that no reference number was given in the appointment letter. WW-1 Shri Fakrul Hassan claimant on the other hand, stated that he was asked to execute agreement copy Ex. M-12 and that the original agreement was taken from him by Mr. Chawla, Works Manager on the plea that the same had to be corrected and that its copy was kept by the claimant. It was submitted by the representative of the claimant that issue No. 4 could not be decided because no reference was made on this point. It was submitted by the representative of the Management that incidental matter relating to main point in controversy had to be decided. In the present case, the management has relied on the appointment letter Ex. M-6, dated 13th May, 1981 while the claimant; case is that the appointment letter copy Ex. M-12 was issued to him on 25th May, 1981. It is thus apparent that in order to decide the main dispute between the parties, it will have to be determined as to whether the document Ex. M-12 is a genuine one or not and as such this point is incidental to the controversy between the parties. The letter Ex. M-6, dated 13th August, 1981 has been proved by MW-2. Shri Jagdish Katyal and MW-3 Shri Mohinder Kumar as mentioned above, and they stated that this letter was issued to the claimant when he was appointed on 13th May, 1981 and that the claimant had affixed his signatures on this document. In this letter it is recited that the claimant was appointed as Teemer man on probation for a period not exceeding six months with effect from 13th May, 1981. The letter copy Ex. M-12 produced by the claimant is dated 25th May, 1981. When the claimant was appointed on

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13th May, 1981, the appointment letter could not be issued on 25th May, 1981. Further, MW-2 Shri Mohinder Kumar stated that no reference number was given in the appointment letters, but the letter copy Ex. M-12 bears the reference number. Moreover, the word 'Teemerman' has been mentioned as 'Timmerman', in the claim statement. This word has been described as 'Timmerman' in the letter Ex. M-12, which means that the spelling of word 'Timmer Man' has been wrongly given as Timmerman not only in the claim statement, but also in the letter copy Ex. M-12. Further, the original of the appointment letter, dated 25th May, 1981 has not been produced by the claimant and he stated that the original document was taken from him by Mr. Chawla, Works Manager. The claimant had not produced any receipt to show that the original of Ex. M-12 was handed over by him to Shri Chawla, Works Manager. It was also argued by the representative of the management that middle portion of the document Ex. M-12 was fitted in the photostat copy which could be done as shown in the documents Ex. M-13 and M-14. The management has thus led sufficient evidence which has been discussed above to show that the letter Ex. M-12, dated 25th May, 1981 does not appear to be a genuine document because it could not bear the date as 25th May, 1981 when the claimant was appointed on 13th May, 1981 nor it could bear the reference number which was not given in the appointment letter nor spelling of word Timmerman, could be the same which was given in the claim statement. The plea regarding handing over of the original of the document Ex. M-12 does not appear to be correct because no receipt has been produced by the claimant to show that the original of Ex. M-12 was handed over by him to Mr. Chawla Works Manager. Consequently, it is held that the document copy Ex. M-12 does not appear to be a genuine document. The issue is decided accordingly in favour of the Management.

ISSUE NO. 3 :

7. It was argued by the representative of the Management that the present dispute between the parties did not fall under the purview of Section 2-A of the Industrial Disputes Act, 1947, because the dispute was raised by the Union and no resolution was passed by the Union to espouse the cause of the claimant. Reliance was placed on the ruling reported as *The British India Corporation Ltd. v. Mohd. Sadiq and*

others, 1974 Lab., I.C. 420, in which it is laid down that Section 2-A of the Industrial Disputes Act, 1947, covers only such cases in which the dispute of individual workman has not been sponsored or espoused by other workmen or any union of the workmen. Second ruling is *Deepak Industries Limited and another and State of West Bengal and others* 1975-I-L.L.J. 293, in which it is laid down that where a dispute is sponsored or espoused by a union of workmen, authority to do so must be proved. The argument does not carry any weight and rulings are distinguishable on facts because in the present case, the dispute has been raised by the claimant in his individual capacity, but he gave his address C/o Faridabad Kamgar Union CITU Gedore Workers Union, Faridabad. The demand notice was signed by claimant and the claim statement was also signed by him and his authorised representative. Merely because Mr. M. K. Bhandari of Faridabad Kamgar Union CITU was the authorised representative of the claimant, is no ground to hold that the dispute was espoused by the Union. On the other hand, it is an individual dispute, which was raised by the claimant, as already mentioned above. Consequently the dispute falls within the purview of Section 2-A of the Industrial Disputes Act, 1947. The issue is decided accordingly against the management.

ISSUE NO. 1 :

8. The management has examined Shri K. P. Aggarwal, who stated that he was appointed as Enquiry Officer,—vide letter Ex. M-1 to hold the enquiry against the claimant and that Ex. M-2 contained the enquiry proceedings, while Ex. M-3 contained his enquiry report. He further stated that the documents, Ex. M-4 to M-9, were produced during the course of the enquiry. He further stated that the claimant did not participate in the enquiry in spite of receiving the notice on 21st September, 1981 and, as such, the enquiry was conducted ex parte. MW-2, Shri Jagdish Lal Katyal, Personnel Manager, stated that the claimant did not produce the clearance certificate and ultimately on 13th August, 1981, he refused to produce the same and told him to do whatever he liked. When the claimant was chargesheeted,—vide document Ex. M-7, he refused to receive the same and a copy was sent to him by registered post and one copy was pasted on the notice board of the factory. He further stated that the claimant received the copy of the chargesheet

on 14th September, 1981 in the office of the Labour Inspector. He also stated that the claimant did not participate in the enquiry on 22nd September, 1981 in spite of service on 21st September, 1981. Copy of the Standing Orders Ex. M-8 and copy of the dismissal letter Ex. M-10 have been proved by him. MW-3 Shri Mohinder Kumar Gupta, Director of the respondent company, stated that the claimant had given the application Ex. M14 when the appointment letter Ex. M-6 was issued to him. He further stated that the claimant was asked to produce the clearance certificate from the past employer, but he refused to do so and told the Personnel Manager to do whatever he liked.

9. The claimant Shri Fakrul Hassan has appeared as WW-1 and stated that he joined the respondent factory as Teemerman, when he was asked to report for duty,—*vide* telegram Ex. M-11. He further stated that he was asked to produce clearance certificate on 13th August, 1981 when he demanded a weeks time to bring the same, but was not allowed to join duty on 14th August, 1981. He further stated that he wrote the letters Ex. W-4 and W-7 to the management and that on 16th September, 1981 the chargesheet was given to him before the Labour Inspector and Ex. W-3 was the reply to the said chargesheet. He also stated that the enquiry notice was given to him on 21st September 1981 at 5.00 p.m. and that the date of enquiry was 22nd September, 1981 at 12.00 noon, when he went to the factory on 22nd September, 1981, but the Chowkidar told him that he had no information regarding the enquiry and that his letter was not taken at the gate of the factory, which was sent by him under postal certificate copy Ex. W-1,—*vide* receipt Ex. W-8. He further stated that no reply was received by him and he sent another letter copy Ex. W-2,—*vide* receipt Ex. W-9. and that a registered letter, copy Ex. W-4, was sent,—*vide* receipt Ex. W-10.

10. A perusal of the above evidence would show that the chargesheet Ex. M-7 contained the charges against claimant to the following effect :—

(1) that on 10th July, 1981, the claimant was asked to produce the clearance certificate and service certificate from his previous employer M/s Cycle Equipment Co. Delhi and that the claimant promised to bring the same, but he failed to do so.

(2) that on 13th August, 1981, the claimant was called in the office and was asked to bring the clearance certificate within 24 hours when got excited and stated that he would not bring the same and the management could do whatever it liked.

Ex. M-2 contains the enquiry proceedings while Ex. M-3 is the enquiry report. A perusal of these documents would show that the claimant was served on 21st September, 1981 to attend the enquiry on 22nd September, 1981, but he did not appear before the Enquiry Officer, when ex parte proceedings were ordered against him and Shri K. P. Aggarwal, Enquiry Officer held ex parte enquiry against the claimant and examined J. L. Katyal, Personnel Officer, Shri Darbara Singh, Security Officer, Shri Nand Ram Security Guard and Shri Paramjit Singh Time Keeper. The Enquiry Officer has discussed the evidence of these four witnesses in the enquiry report Ex. M-3 and found that the charges levelled against the claimant stood proved. The report of the Enquiry Officer is based on evidence.

11. It was argued that the enquiry was held in haste and that another notice should have been given by the Enquiry Officer. The argument is without any force because the claimant received notice of enquiry on 21st September, 1981 for 22nd September, 1981 at 12.00 noon. He could appear before the Enquiry Officer and seek adjournment, but he did not do so due to which the Enquiry Officer had to hold ex parte enquiry. The Enquiry Officer has deposed that the letter copy Ex. W-2, dated 22nd September, 1981 was not received by him from the claimant. If the chowkidar was causing any obstruction at the gate of the factory, the claimant must have mentioned about it in his letter copy Ex. W-1. Firstly, the Enquiry Officer deposed as MW-1 that he did not receive this letter. Secondly, in this letter it is nowhere mentioned that on 22nd September, 1981, the Chowkidar caused any obstruction, due to which he could not attend the enquiry. The enquiry was completed on 22nd September, 1981 because all the four witnesses were examined on that date and the report Ex. M-3 was submitted on 25th September, 1981. In the ruling reported as *Motor Industries Co. Ltd. v. Shaikh Mohammed and another*, 1978 Lab. I.C. 1335, it is laid down that where the employee remained absent in spite of notice, the enquiry

held in his absence was a valid one. Consequently, the Enquiry Officer proceeded *ex parte* against the claimant because he did not appear before him on 22nd September, 1981 inspite of notice.

12. It was then argued that the chargesheet was served late on the claimant when the chargesheet is dated 14th August, 1981. MW-2, Shri J. L. Katyal has deposed that the claimant refused to receive the chargesheet. Even a copy was pasted on the notice board and one copy was sent by registered post, but ultimately the claimant received the same on 14th September, 1981 in the office of the Labour Inspector. As such, there has been no delay on the part of the Management in this respect.

13. It was then argued that reasonable time was not given to the claimant to produce the clearance certificate. The argument is without any force. In the chargesheet copy Ex. M-7, it is mentioned that the claimant was asked to produce the certificate on 10th July, 1981 and was ultimately asked on 13th August, 1981, but he refused to produce the same and asked the Management to do whatever it liked. The claimant was, therefore, given more than one month time for this purpose.

14. In view of the above discussion, no interference is called for with the findings given by the Enquiry Officer, which were based on evidence and as such the enquiry is fair and proper. The issue is decided accordingly in favour of the Management.

ISSUE NO. 2 :

15. The appointment letter Ex. M-6 shows that the claimant was appointed on probation for six months on 13th May, 1981. Consequently, he was on probation upto 12th November, 1981, but before that date he was chargesheeted on 14th August, 1981 and was dismissed on 12th October, 1981,—*vide* letter Ex. M-10 after holding the enquiry. It is thus apparent that the claimant was dismissed before he could complete the period of probation.

16. It was argued by the representative of the Management that punishment award to the claimant was proportionate to the charges proved against him. Reliance was placed on the ruling reported as *Sri Rama Vilas Services Ltd. Kumbakonam, The Presiding Officer, Labour*

Court, Madras and another 1971 ILLJ 464, in which it is laid that it was not in the interest of peace and harmony in the industry to reinstate the drivers and that industrial peace was essential both from the point of the Management and Labour. The second ruling is *Kanshi Ram Verma v. Labour Court, Patiala and others* 1980 (56) F.J.R. 227, in which it is laid down that a person cannot be employed unless he is qualified to hold the post. In that case the employee had not furnished the certificate regarding his qualifications and the affidavit that he was not a dismissed employee. However, it was argued by the representative of the claimant that punishment given to the claimant was harsh and severe. As already mentioned above, the claimant was appointed on probation for a period of six months and in case he was not producing the clearance certificate, he could be discharged immediately or completing the probationary period of six month on 12th November, 1981. He was, however, dismissed on 12th October, 1981, as a result of the enquiry for not producing the clearance certificate and using rough language that he was not producing clearance certificate and the Management could do whatever it liked. Consequently, the punishment of dismissal was harsh and severe, in the circumstances of this case. The rulings are distinguishable on facts because the claimant could easily be discharged after completing the period of probation of six months on 12th November, 1981. The impugned order of dismissal, dated 12th October, 1981 is, therefore set aside. At the same time the reinstatement of the claimant is not proper because he could serve for a period of one month only after 12th October, 1981, because his period of probation was completed on 12th November, 1981 and as such in lieu of reinstatement, the ends of justice would be met, if the claimant is given compensation equivalent to three months wage which he was drawing prior to his order of dismissal. The award is passed accordingly.

Dated 13th December, 1985.

R. N. BATRA,
Presiding Officer,
Industrial Tribunal, Haryana, Faridabad.
Endorsement No. 953, dated 13th December, 1985.

Forwarded, (four copies) to the Commissioner and Secretary to Government, Haryana, Labour and Employment Departments Chandigarh as required under section 15 of the Industrial Disputes Act, 1947.

R. N. BATRA,
Presiding Officer,
Industrial Tribunal, Haryana, Faridabad.